



STATE OF WISCONSIN  
DEPARTMENT OF ADMINISTRATION

Tony Evers, Governor  
Joel Brennan, Secretary  
Amy Kasper, Division Administrator

March 20, 2019

Via E-Mail

Mr. Kevin Schmidt  
Director of Investigations  
Cause of Action Institute  
[Kevin.schmidt@causeofaction.org](mailto:Kevin.schmidt@causeofaction.org)

Dear Mr. Schmidt:

This is in response to your February 12, 2019, public records request for all email messages, email message attachments, and text messages to or from each of the following Department of Administration employees:

- Joel Brennan, Secretary
- Tristan Cook, Deputy Communications Director

that include the following search terms:

- |                  |   |
|------------------|---|
| • "Foxconn"      | • "Jim Paetsch"                                   |
| • "Flying Eagle" | • "Joel Brennan"                                  |
| • "Trump"        | • "Robin Vos"                                     |
| • "White House"  | • "Scott Fitzgerald"                              |
| • "Terry Gou"    | • "WEDC"  |
| • "Alan Yeung"   | • "Mark Hogan"                                    |
| • "Louis Woo"    | • "Wisconsin Economic<br>Development Corporation" |

You also explained that your request should not be construed to include "news clippings or other mass mailings unless there is commentary related to them." We understood the date range for your request to be January 27, 2019, through February 12, 2019, which is the date we received your request.<sup>1</sup>

We are providing the attached records in response to your request. Please note that we did not use "Joel Brennan" as an independent search term when searching Secretary Brennan's email, because it would necessarily capture every email message sent and received by him during the specified time period. We did not understand the scope of your request to be that broad, but even if it were, it would not constitute the kind of reasonable subject matter limitation than the Wisconsin Public Records Law requires. See Wis. Stat. § 19.35(1)(h).

When you review the records, you will notice that some information is redacted. We have taken reasonable efforts to redact personal telephone numbers and personal email addresses, pursuant to Wis. Stat. § 19.36(10)(a) and (11) and the common law

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<sup>1</sup> As the Wisconsin Attorney General has explained, the right of access under Wisconsin's public records law "applies only to records that exist at the time the request is made ...." 73 Op. Att'y Gen. 37, 44 (1984).

balancing test. We have determined that the public interest in disclosure of this information is outweighed by the public interest in the expectation of privacy on the part of individuals in their personal lives. Further, the public interest in protecting personally identifiable information that could lead to identity theft, intrusions on personal safety, and other unwarranted invasions of privacy outweighs the public interest in access to that information. See Wis. Stat. § 19.36(13); 42 U.S.C. § 405(c)(2)(C)(viii)(I); 5 U.S.C. § 552a; and 18 U.S.C. § 2721.

We also redacted conference call phone numbers and associated passcodes. Withholding this information causes only minimal harm to the public interest in access to individual state employees because the employees are accessible via publicly available main state office lines or mail. Conversely, making conference call phone numbers and passwords available to the public would cause unnecessary and unwarranted interruptions for employees and could allow unauthorized access to discussions that may involve confidential information. Pursuant to the common law balancing test, we have concluded that the public interest in the efficient and effective performance of state business outweighs the minimal public interest in access to this information.

Unpublished cell and office phone numbers of state employees are likewise redacted pursuant to the common law balancing test. Withholding this information causes only minimal harm to the public interest because these individuals are accessible via publicly available main state office lines or mail. Conversely, making unpublished phone numbers available to the public could cause unnecessary and unwarranted interruptions and harm the ability of these employees to effectively prioritize their time. Pursuant to the common law balancing test required under Wisconsin's public records law, we have concluded that the public interest in the efficient and effective performance of state business outweighs the minimal public interest in access to this information.

For similar reasons, we also redacted an email address of a high-ranking Foxconn official, where our understanding is that this is not a publicized email address. Making such contact information generally available could cause unnecessary and unwarranted interruptions and could harm their ability to effectively prioritize their time. Balancing this against the public interest in disclosure under the common law balancing test, we have concluded that the balancing test weighs against disclosure of this specific information, particularly in light of the fact that this individual is clearly identified in the records and is accessible by other publicly available means.

Attorney-client privileged communications and work product have been withheld pursuant to Wis. Stat. §§ 19.35(1)(a), 804.01(2)(c), and 905.03. See *George v. Record Custodian*, 169 Wis. 2d 573, 582, 485 N.W. 2d 460 (1992); *Seifert v. School District of Sheboygan Falls*, 2007 WI App 207, ¶128, 305 Wis. 2d 582, 740 N.W. 2d 177.


Pursuant to the common law balancing test, we have redacted information regarding an individual's medical histories, conditions, and/or treatments. We have determined that the public interest in protecting the privacy of this individual's family, along with the public interest in the confidentiality of medical records expressed in Wis. Stat. § 146.82, outweighs the interest in access to the information.

Finally, we also withheld copies of closed-session meeting minutes from WEDC board meetings on November 20, 2018 and December 12, 2018, pursuant to Wis. Stat. 19.85(1)(e), Wis. Stat. § 238.08, and the common-law balancing test. Wis. Stat. § 238.08 exempts from disclosure any records "relating to pending grants, loans, or economic development projects that, in the opinion of [WEDC], must remain

confidential to protect the competitive nature of the grant, loan, or project," and the open meetings law generally authorizes closed sessions "whenever competitive or bargaining reasons require a closed session." Wis. Stat. § 19.85(1)(e). Here, the closed-session minutes pertain to projects that remained pending at the time. Because these are WEDC records, the Department of Administration lacks the information necessary to definitively determine which of these projects remain pending today and which, if any, may be disclosed. Section 238.08 expressly entrusts WEDC with the determination as to whether its records relating to pending grants, loans, or economic development projects must remain confidential. For these reasons, we have determined that the public interests expressed in Wis. Stats. §§ 19.85(1)(e) and 238.08 outweigh the public interest in disclosure of these specific records by DOA at this time. Because these are WEDC records, you may wish to make a request directly to WEDC in order to obtain a specific determination under Wis. Stat. § 238.08.

Pursuant to Wis. Stat. § 19.35(4)(b), we must inform you that if this response constitutes a full or partial written denial of a public records request that was made in writing, the determination is subject to review by mandamus under Wis. Stat. § 19.37, or upon application to the Attorney General or a District Attorney.

Sincerely,

A handwritten signature in black ink, reading "David J. Rabe", with a long horizontal flourish extending to the right.

David J. Rabe  
Legal Counsel

